

REMARKS

Claims 1-14 are pending in the application.

The claims appearing in this amendment are compliant with the provisions of 37 CFR 1.173(d). The claims that were filed in the Amendment of December 8, 2006 were not intended to be amended. Claim 3 was a claim that was indicated as (previously presented.) The underlining and canceling that appeared in claim 3 was from a preceding amendment. In other words, it was a word processing error. The present claims appearing above correct that error.

Further, the applicants request that the finality of the office action be withdrawn. Since Applicants the markings in claim 3 were clearly a word processing error, no new ground of rejection was required. This minor type of error is typically corrected by the sending of a “non-compliant” amendment notice. It is not an amendment that requires a new grounds of rejection.

The only remaining rejection is over claims 1-14. The Examiner indicated that claims 1-14 contain allowable subject matter. However, the Examiner rejected the Oath as defective for not stating “original and first” inventor. Applicants stated in their oath that the inventors are “original joint inventors”. The term “original” means first. Websters Ninth New Collegiat Dictionary, 1997, indicates that the definition of original is “not secondary derivative or imitative.” The meaning of the phrase “original joint inventors” is clear on its face that the inventors together declared that they were the original or first inventors. Hence, the oath is in compliance with the Rules.

The oath was previously objected to because the Examiner indicated that the oath did not declare “every error in the patent which was corrected in the present reissue


application, and is not covered by a prior oath/ declaration submitted in this application, arose without any deceptive intention on the part of the applicant.” However, the Examiner’s attention is directed to page 3 of the oath where it states “All errors which are being corrected in the present reissue application up to the time of filing of this declaration arose without any deceptive intention on the part of the applicants.” The language used was copied from the MPEP in the year 2000. It is essentially the same as that required by the Examiner.

Further, the Examiner has objected to the oath for indicating that “patentees claiming less than patentees had a right to claim,” because that defect no longer exists with the canceling of claims 15-33. We submit that the oath pointed out two errors, “claiming less” and the correction of “improper multiple dependent claims.” These errors were errors that the patentees believed existed at the time of filing the oath as required by the rules. The rules do not require the filing of a supplemental oath in situations like the present where some of the errors no longer exist. Actually, MPEP 1414.01 only requires the filing of a supplemental oath in instances where there are additional defects or errors that are corrected in the reissue after the filing of the application, unless the additional errors corrected are spelling, grammar, typographical, editorial or clerical errors which are not errors under 35 USC 251. “In other words, a supplemental oath, declaration is required where any ‘error’ under 35 USC 251 has been corrected and the error was not identified in the original reissue oath/declaration.” (MPEP 1414.01) All of the errors have been corrected at this point through examination and amendments, including the correction of improper “multiple dependent claims” (oath page 2). No new reissue oath is required under the Rules.

Further, this application was filed in June 2000. There has been extensive examination of this application that has taken place. These new rejections to the oath were never made in the first 5 years of examination. At this late time in prosecution, seven years after the original filing, it is very difficult to locate all of the inventors in an application for the filing of a supplemental declaration. They have moved away, taken new jobs, are deceased, etc. We bring this up because we respectfully urge that this type of rejection be made early on so that if a supplemental oath or declaration is really needed, the undersigned will have the ability to locate all applicants and execute such a supplemental declaration.

Reconsideration and allowance are respectfully requested.

Respectfully submitted,



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